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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,651	08/28/2003	Eric M. Boettner	06533-0103	7280
3490	7590	11/08/2004	EXAMINER	
DOUGLAS T. JOHNSON MILLER & MARTIN 1000 VOLUNTEER BUILDING 832 GEORGIA AVENUE CHATTANOOGA, TN 37402-2289			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	
DATE MAILED: 11/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/650,651	BOETTNER ET AL.
	Examiner Ghassem Alie	Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 3-9 and 11-16 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2, and 10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/28/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election of Group I (claims 1-10) and species I (Figs. 1-8) is acknowledged. The traversal is on the ground(s) that that claims some of claims of both Group I and Group II share elements of novelty such as claims 10 and 13. It should be noted that claim 10 depends from claim 1 and claim 13 depends from claim 11. Claims 10 and 13 may share elements of novelty; however, the restriction requirement of Group I and Group II is still proper. Because Group I (claims 1-10) and Group II (claims 11-16) are related as a combination and subcombination and these two Groups are patentably distinct, since the combination as claimed does not require the particulars of the subcombination as claimed and the subcombination has utility by itself or in other combinations. See paragraph 3 on page 2 of the previous Office action mailed on 09/14/04.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 3-9, and 11-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mayer (3,038,256).

Regarding claim 1, Mayer teaches a spoon and straw 10, 20 including a tubular portion 20

and a bowl portion 10, wherein the bowl portion 10 is formed of a front wall 11 and a back wall 12. Mayer also teaches that the front and back walls 11, 12 of the bawl portion 10 are being connected by a left curved wall and a right curved wall and defining a lumen 13, 13' between such front and back walls 11, 12. The inclined wall that covers the cavity 13 is defined by the left curved wall and the including wall that covers the cavity 13' is defined as the right curved wall. The front and back walls 11, 12 are connected together by straw extension 14 and a cavity is defined between the front and back walls 11, 12. See Figs. 1-3 and col. 1, lines 51-72 and col. 2, lines 1-72 in Mayer. Mayer also teaches that the spoon and straw utensil 10, 20 can be formed of resin on extrusion forming equipment. See col. 2, lines 35-45 in Mayer.

5. Claims 2 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by Mayer or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mayer. Regarding claims 2 and 10, Mayer teaches everything noted above except that the utensil is formed on continuous corrugating equipment having pairs of molds and the extrusion process orients the resin molecules for stiffness in the machine direction while expanding the resin extrusion to fill the molds orients the resin molecules for stiffness in the direction traverse to the machine. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does depends on the process of making the spoon and straw utensil. See MPEP section 2113. In addition, Official notice is taken that the use of continuous corrugating equipment for forming a tube or the like is well known in the art such as taught by Dickhut et al. (4,439,130), Bayman et al. (3,605,817), and Iwata et al. (4,724,111).

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6. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102(b) as anticipated by McCrea (5,038,476) or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCrea. Regarding claim 1, McCrea teaches a spoon and straw 10 including a tubular portion 22 and a bowl portion 14, wherein the bowl portion 14 is formed of a front wall and a back wall. McCrea also teaches that the front and back walls of the bawl portion 14 are being connected by a left curved wall and a right curved wall and defining a lumen 16 between such front and back walls. See Figs. 1-4 and col. 2, lines 3-57 and col. 3, lines 1-30 in McCrea. The spoon and straw utensil is made of plastic which is inherently is formed from one type of resin. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does depends on the process of making the spoon and straw utensil. See MPEP section 2113. In addition, Official action is taken that forming of resin on extrusion forming equipment is well known in the art such as taught by Mayer.

Regarding claims 2 and 10, McCrea teaches everything noted above except that the utensil is formed on continuous corrugating equipment having pairs of molds and the extrusion process orients the resin molecules for stiffness in the machine direction while expanding the resin extrusion to fill the molds orients the resin molecules for stiffness in the direction traverse to the machine. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does depends on the process of making the spoon and straw utensil. See MPEP section 2113. In addition, Official notice is taken that the use of continuous corrugating

equipment for forming a tube or the like is well known in the art such as taught by Dickhut et al. (4,439,130), Bayman et al. (3,605,817), and Iwata et al. (4,724,111).

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Iwata et al. (4,724,111), Bauman et al. (3,605,817), Dickhut et al. (4,439,130), Crane et al. (5,946,807), Coscia et al. (6,463,662), Richardson et al. (D458,809), Float et al. (6,460,777), Thorball et al. (6,283,294), Hucknall (2,599,919), Lewis (Des. 392,148 and 5,727,321), Panisch (4,779,344), Pearson, Jr. (3,968,591), Kinman (2,859,515), Crane et al. (Des. 414,382), Aykanian (3,461,554), Lynch (Des. 370,587) teach a straw and spoon utensil, a straw utensil, or a spoon utensil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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November 3, 2004

*ay*  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700